

Tuesday - December 9, 1997 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman H. Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

**CONSENT AGENDA:**

**Agreement with N.C. Dept. of Transportation for Improvements at NC 151/Pisgah Highway from Fowler Mountain Road to US 19-23-74**

This item was removed from the Consent Agenda.

**Agreement with N.C. Dept. of Transportation for Improvements at US 74 from I-40 Interchange to SR 2775 which includes Mine Hole Gap**

This item was removed from the Consent Agenda.

**Establishing Price for Certain City-owned Parcels of Real Property**

Summary: The consideration of establishing minimum prices for certain parcels of surplus real property that have been recommended for sale by the Planning & Development Department.

At the request of Councilwoman Field, Mr. Ed Vess, Field Services Coordinator, said that he would update the tax values to make sure that they were the present tax values and not the tax values from the re-evaluation done four years ago.

Mr. Vess explained that the contract with the Realtor was authorized in 1995, noting that other Realtors could work through that Realtor.

**Prescription Drug Card Company Administrator**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Smith Premier Drug Company to administer the Employee Benefit Drug Card.

**Budget Amendment re: State Controlled Substance Excise Tax**

Summary: The consideration of a request that \$30,000 of the State Controlled Substance Excise Tax funds be appropriated to enhance law enforcement activities in fiscal 1997/98.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

**AUDIT REPORT**

Finance Director Bill Schaefer said that as required by N. C. General Statute 159-34, outside auditors Crisp Hughes Evans LLP of Asheville, North Carolina, performed an audit of the -2-

City of Asheville for the fiscal year ended June 30, 1997. They gave the City a "clean" audit opinion.

Mr. Ed Cody, Engagement Partner, highlighted information about the audit, the audit process and their results.

City Council discussed briefly the City's fund balance and the deficit of the Civic Center.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

### **BUDGET AMENDMENT RE: WATER RESOURCES DEPARTMENT**

Assistant City Manager S. Douglas Spell, said that this is consideration of adjusting budget expenditures in order to more accurately match projected revenues for the FY 1998 Water Resources Department budget.

Within the last several weeks it has come to staff's attention of a need to make an adjustment to the FY 1998 Water Resources Department's budget. City staff continually monitors the budget to ensure that revenues and expenditures fall within an acceptable range during the budget year. Based on that review, staff recommended several adjustments to the expenditure side of the budget. These recommendations were presented to the Water Authority at their meeting on November 18, 1997. The Water Authority approved staff's recommendation.

As background, during the preparation of the FY 1998 budget, revenues for utility charges were projected to be \$18,253,660.00. The actual utility charges in FY 1996 were \$15,510,505.00 and for FY 1997 \$15,987,651.00. As a result of the review process, staff forecasts revenues in the current fiscal year to be \$16,307,404.00. Staff therefore recommends reducing the revenue budget to meet the forecast above.

A significant portion of the overstated revenue is as a result of a billing adjustment error that occurred during the prior year when the new billing software system was brought on-line. The old system and new system were run in parallel for approximately 30 days when the old system went down and the new system had to be operated alone. The amount of the adjustment error used in the projections for utility charges was in the amount of \$783,484.00. This amount projected across the full year resulted in approximately a \$2.2 million over-projection of total revenue for FY 1997/1998.

Another item that affects the budget is the requirement as a part of the bond covenants to have 120% of the debt service. The additional 20% "cushion" amounts to the need for an additional \$426,400.00.

Finally, an error in the computation estimated for the cost allocation plan resulted in a shortfall of funds. This error resulted in an amount of \$229,000.00.

In order to meet the revised forecast revenue projections, the expenditure side of the budget would also need to be adjusted. The net budget adjustments consist of approximately \$2.2 million. Over the past month, City staff have begun a review of the monthly reports and yearly trends compared to first quarter data. These trends and forecasts are consistent with the most recent revenue projections provided by the City Finance Department. Staff met with Division Heads in the Water Resource Department to outline the budget adjustments necessary and solicit their comments, support and suggestions.

As a result of those meetings and detailed analysis by Water Resource Department staff, the following strategies were utilized in order to identify budget adjustments: -3-

- The filling of vacant positions was postponed with the exception of one meter reader position which was critical to on-going needs in this Division;

- The purchase of new capital equipment was delayed except for several pieces of equipment which were necessary due to safety concerns including backhoe trailers and portable lights;
- Various other line items were reduced based upon historical expenditure in the line item accounts;
- Capital Projects were analyzed in order to determine if any projects could be delayed until future years.

In moving forward with this strategy, it was our goal to not adversely affect any service programs and continue the high level of service the City is committed to providing. Several other line items which have not been reduced were identified and discussed with Division Heads as being essential that we not exceed the budgeted funds. Examples of these pertain to overtime and materials line items. Additionally, the Department has begun to examine various reengineering areas within the Department to provide increased productivity and try to reduce costs by trying to "work smarter".

City staff also looked at a couple of industrial water accounts which have announced closings. Even though these two accounts would have no significant impact on the current year's revenues, staff reviewed these to determine future impact. In discussions with officials at Gerber, it is my understanding that they plan to close their production facility on April 3, 1998. Currently, the City receives approximately \$400,000.00 per year in water revenues from the water use by Gerber. Therefore, the impact for FY 1998 is projected to be approximately \$100,000.00 for the three months they are expected to be closed during this budget year. The other industry which has a lesser impact is National Linen. It is my understanding that this facility closed on November 1, 1997. However, the water usage from this facility is approximately \$48,000.00 per year. Therefore, the revenue impact for FY 1998 is projected to be \$32,000.00. Staff will take these into consideration as a part of the revenue projections for next year.

The Regional Water Authority has reviewed and approved these budget adjustments. Upon approval of the necessary budget adjustments, the budget will also require approval by Buncombe County consistent with the agreement dated November 11, 1995.

Mr. Spell answered various questions from Council regarding postponement of filling vacant positions to line item reviews.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

### **DISPOSITION OF REAL PROPERTY POLICY**

Mr. Ed Vess, Field Services Coordinator, said that this is consideration of adopting a Real Property Disposition Policy which has been developed to govern the sale of City-owned real property.

The purpose of the Real Property Disposition Policy is to provide a clear and consistent process for the disposition of City-owned real estate which complies with applicable federal and state regulations; is understandable, accessible and fair to the general public; and maximizes the return to the City considering both monetary and public benefit.

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The objective is to assign responsibility within the City for coordinating the disposition of real property, and to establish requirements for determining the availability of real property for disposition; procedures for carrying out the disposition of real property; and, conditions for participation by real estate brokers in the sale of City-owned real property.

Under the proposed policy the Director of Planning & Development will be responsible for maintaining an

inventory of City-owned property and coordinating the sale of same.

Approval of the resolution will establish the policy for disposition of City-owned real property.

Councilman Hay felt it was good to have this written policy in place so the public will know exactly what they need to do if they are interested in purchasing some City property.

Upon inquiry of Councilman Tomes, Mr. Vess said that the City never has had a written policy regarding the disposition of City property but has followed State law.

Councilman Tomes felt that since the City never had a policy in the past, he felt he needed additional information on why a policy was needed now. Mr. Vess responded that staff has been working on this policy for a long time and even though the written policy is not critical, it will make a structured and predictable procedure. With a written policy there will be no confusion as to how this process is supposed to work.

Councilwoman Field inquired about the possibility of a staff person becoming a real estate broker so the City wouldn't have to pay a broker's commission. Mr. Vess responded that he was a broker and has handled a number of sales for the City. He did specifically point out the provision in the policy stating the circumstances that a commission would not be paid to a broker.

City Attorney Oast clarified the statement which read "The City Council reserves the right to reject any and all bids and to waive any irregularities in the bidding process."

Mr. Vess responded to questions from Councilman Cobb relative to lots being available for affordable housing and where does the money go from the sale of the property.

Mayor Sitnick wanted staff to make sure that all City property is being used to the highest benefit.

Mayor Sitnick suggested developing an inventory of developable and non-developable properties. With non-developable properties, the City might consider donating some larger parcels for neighborhood parks and smaller parcels to possibly Magic Community Gardens. This way the property is off our maintenance rolls and helping the community.

Mayor Sitnick said that when the City develops an affordable housing policy, the issue of lots for affordable housing and other of issues can be addressed.

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Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

### **VOLUNTARY ANNEXATION OF SECTION 10 OF BILTMORE PARK**

Mr. Paul Benson, Urban Planner, explained to Council that North Carolina law permits cities to annex property if annexation is requested in writing by 100% of the property owners of the property to be annexed. However, these annexations are limited to property within three miles of the existing corporate limits and no closer to another city. If they meet these conditions they may be contiguous to the existing city limits or satellite areas. Typically, annexations are petitioned for 1 of 2 reasons: 1) to extend city services, especially water and sewer, or 2) to permit a restaurant or nightclub to serve alcoholic beverages that are permitted in the city but not in the surrounding county.

In the case of Biltmore Park, the owner, Biltmore Farms Inc. and the City of Asheville entered into an agreement by which the city would pay up to \$185,000 in partnership with Buncombe County and Biltmore

Farms Inc. to extend a sanitary sewer line along Long Shoals Road from Estes Elementary School to the French Broad River. In return, Biltmore Farms Inc. has agreed to petition for annexation of their property, within 6 months of development.

Including the pending petition, Biltmore Farms has petitioned 10 sections of the residential development, located west of Overlook Road and north of Long Shoals Road, called Biltmore Park. Together, these annexations include 176 acres subdivided into 233 lots. With an estimated contribution to the city tax base of \$250,000.00 per lot when developed these annexations have increased the tax base by approximately \$58,250,000. This tax base yields over \$300,000 per year in property tax to the city at current tax rates.

All improvements such as internal utilities, street and sidewalk construction, street signs and lighting are made by the developer. The city is responsible for normal city maintenance services upon the effective date of annexation.

The Section 10 annexation consists of a single lot of 3.9 acres located north of Holt Lane and contiguous with Section 5, which was annexed on August 21, 1995. A public hearing on this annexation was set by City Council resolution for December 16, 1997. The applicant has requested a six month delay of the effective date to June 16, 1998.

Mr. Benson responded to questions from Councilman Cobb relative to City's standards regarding street construction, the projected final size of the development and if the developer is setting property aside for parks,

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

### **1997 BELE CHERE REPORT**

Mr. Irby Brinson, Parks & Recreation Director, introduced Ms. Joyce Harrison, the 1998 Bele Chere Chair. He then presented the 1997 report of Bele Chere which includes a financial statement and status of Bele Chere Strategic Plan.

In January, 1997, City Council approved the Bele Chere Strategic Plan for the next five years. A part of that plan included an annual report to City Council each year after the festival was completed. He then reviewed an update of the Strategic Plan and a financial statement for the 1997 festival. The financial statement shows that Bele Chere made a total of \$64,941. This -6-

is due largely to an overall increase in sponsorships of approximately \$30,000 from 1996 and better accountability for the sale of beverages. The profit made from Bele Chere will go into the festival fund and will be used to enhance Bele Chere as well as other festivals and special events produced by the department, therefore reducing the City's taxpayers' support of these events. The highlights from the Strategic Plan include a reduction in the number of arrests made in this year's festival compared to 1996. Arrests were down approximately 60%. In addition, a proactive dialogue was established with downtown merchants to discuss on-going issues regarding the festival. This has resulted in better communication and trust by both groups. The Bele Chere Festival could not possibly be produced at its current level of quality without the continued support of all City departments. Without their commitment to this festival, the behind-the-scenes functions of this event would not be possible.

The Parks and Recreation Department recommends City Council's endorsement of the annual report for Bele Chere.

Discussion surrounded whether the City should accept contributions or sponsorship from Harrah's Casino in Cherokee, N.C., for the 1998 Bele Chere Festival, noting that they were a \$9,000 sponsor last year.

Councilman Sellers felt that the City should not accept sponsorship from Harrah's Casino in that the City is trying to make Bele Chere more family oriented by trying to phase out alcohol and felt it was not appropriate to accept contributions from a gambling casino. Councilman Cloninger agreed.

Councilwoman Field had a different point of view. She felt that the City should take advantage of whatever sponsorships they could. She did not feel that Asheville would be bringing gambling into the festival, noting that they did support three events last year and she didn't see any gambling at that festival.

Mayor Sitnick agreed that gambling does not go hand-in-hand with family festivals and felt that the City could generate money in other places.

Mr. Brinson responded to questions from Councilman Cobb about the budget figures for the City's involvement with the festival and whether the festival is still manageable.

At the request of Councilman Sellers, City Attorney Oast said that he would prepare a resolution for Council's consideration next week directing the Bele Chere Board not to accept contributions or sponsorship from businesses that promote gambling.

Councilwoman Field suggested remaining silent on this issue and just not accept the contribution. Councilman Cobb agreed with Councilwoman Field.

Mr. Brinson felt that he preferred some specific direction for not only this issue, but other sponsorship issues in the future.

Mayor Sitnick suggested the City Attorney draft a resolution to be discussed at the next formal City Council meeting.

### **RETREAT**

It was the consensus of City Council to hold the City Council/staff retreat on either the weekend of January 9 or January 30, 1998, depending on the availability of Highland Lake or Freedom Retreat.

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City Manager Westbrook said that he would meet with the Council Retreat Committee on a draft agenda for the retreat.

Mayor Sitnick suggested a procedure whereby each Council member would create a list prior to the retreat that incorporates all of the issues that they would like to bring to fruition or any new thoughts or concerns that were brought up during the campaign. City Manager Westbrook said that the Committee would work on that procedure.

City Manager Westbrook was given direction from City Council as to what they would like the role of departments to play in the retreat.

### **RESCHEDULING JANUARY 6, 1998, WORKSESSION**

Due to the number of City Council members involved in the newly elected officials school offered by the Institute of Government, Councilwoman Field moved to reschedule the Tuesday, January 6, 1998, worksession to Monday, January 5, 1998. The worksession would begin at 3:00 p.m. in the First Floor North Conference Room in the City Hall Building. This motion was seconded by Councilman Sellers and carried unanimously.

At 5:00 p.m., Mayor Sitnick announced a five minute break.

### **CITY COUNCIL BOARD/COMMISSION LIAISONS**

Mayor Sitnick reviewed the City Council Board/Commission liaison and members list and where appropriate, with the concurrence of the entire Council, assigned Council members. For those appointments requiring Council approval, they will be scheduled at the next formal City Council meeting.

ABC Board Earl Cobb - Liaison

ADA Compliance Committee Earl Cobb - Member

Air Pollution Control Chuck Cloninger - Liaison

Airport Authority Edward Hay - Liaison

Arts Alliance Barbara Field - Liaison

Asheville Downtown Commission Barbara Field - Member

Chuck Cloninger - Member

Asheville Regional Housing Consortium Barbara Field - Chairman

Asheville School Board Edward Hay - Liaison

O.T. Tomes - Liaison

Bele Chere "Where We Go In The Future Tommy Sellers - Liaison

Boards & Commissions Edward Hay - Chairman

Barbara Field

Tommy Sellers

Board of Adjustment Earl Cobb - Liaison

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Buncombe County Drug Commission O.T. Tomes - Liaison

Carriage Permit Advisory No liaison

Charlotte Street Small Area Plan Tommy Sellers

Citizens/Police Tommy Sellers - ( non-voting Member)

City Business & Development Barbara Field - Member till 10/1/98

Vacancy - Member till 10/1/99

Civic Center Commission Edward Hay - Liaison

Civic Center Future Task Force Edward Hay, Chair

Tommy Sellers

Charles Worley

Civil Service Board O.T. Tomes - Liaison

Community Relations Council Edward Hay - Liaison

County Environmental Affairs Barbara Field - Member (County appoints)

County Solid Waste Committee Barbara Field - Member (County appoints)

CrimeStoppers Tommy Sellers - Member

Disability Review Board Chuck Cloninger, Chair

Electrical Examiners Tommy Sellers - Liaison

Fair Housing Commission Earl Cobb - Liaison

Fees & Charges Committee Barbara Field

Tommy Sellers

Earl Cobb

Festivals Leni Sitnick - Member

Firemen's Relief Fund No liaison

Greenway Commission Chuck Cloninger. Chair

Barbara Field

Edward Hay

Historic Resources Commission Chuck Cloninger - Liaison

Housing Authority Leni Sitnick - Liaison

Housing & CD Committee Barbara Field, Chair

Edward Hay

O.T. Tomes

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Land of Sky Regional Council Leni Sitnick

O.T. Tomes - Alternate

Light Up Your Holidays Tommy Sellers - Liaison



Mayor's PACE Committee Leni Sitnick

Barbara Field

Chuck Cloninger

Metropolitan Sewerage Board Barbara Field - Member

Minority Business Commission O.T. Tomes - Liaison

Opportunity Corporation No liaison

Outside Agency Reviews Tommy Sellers

Chuck Cloninger

Earl Cobb

Pack Place Board of Trustees Edward Hay - Member

Planning & Zoning Commission Tommy Seller - Liaison

Recreation Board Earl Cobb - Liaison

Mayor's Retreat Committee Chuck Cloninger

Leni Sitnick

O.T. Tomes

Resource Centers Tommy Sellers

Earl Cobb

O.T. Tomes

Steering Committee for Visioning Rock McClure - Member

Edward Hay - Member

Tourism Development Authority Barbara Field - Ex-officio Member

Transit Authority Chuck Cloninger - Liaison

O.T. Tomes - Liaison

Transportation Advisory Committee Chuck Cloninger - Chair

Leni Sitnick - Member

Earl Cobb - Liaison

Tree Commission Chuck Cloninger - Liaison

It was the Council's consensus to refer the vacancy on the City Business and Development Commission to

the Boards & Commissions Committee.

### **CABLE FRANCHISE AGREEMENT**

At the request of Councilman Cloninger, it was the consensus of City Council to instruct the City Manager to prepare a timetable at the January 5, 1998, regarding the cable television -10-

franchise agreement. The timetable should suggest (1) a worksession date for staff and the consultant to bring the new Council members up to date; (2) a date and place for a public educational meeting whereby members of the public could ask questions; and (3) a date and place for a public hearing on the cable TV franchise agreement. City Council agreed that the public meeting should be held in the evening and individuals should try to submit questions and comments prior to the meetings.

### **AMERICAN HERITAGE RIVER INITIATIVE**

Ms. Carol A. Collins, Buncombe County Chapter Chairman of The Preservation of Private Property Rights Alliance of Western North Carolina, read a prepared statement and distributed to Council several documents. Said statement, reads in part: "We ... request that each governing body reconsider their earlier endorsement and promotion of the American Heritage Rivers Initiative and application of the French Broad River as a river so designated. While it is believed that there is considerable honor in the designated title and a possible benefit to tourism, it is apparent that the federal attention and expedited funding is seen as the most desirable benefit to be derived from this designation. However, as citizens are learning of the vagueness of this arrangement, there is considerable growing concern that the honor of the title and the enticement of the federal funding would result in onerous federal government intrusion with all the federal attention from the River Navigator and the 13 federal agencies coordinating the funding and assistance. Many are realizing that when the Departments of Agriculture, ... get involved, there not be 'new regulations' to complicate the situation for property owners who reside in the entire watershed of the French Broad. Because the coordinating agency, the Council on Environmental Quality, is not granted the power to govern or regulate rivers or watersheds within sovereign states, this initiative represents a challenge of the Congress' s powers and rights of states, in line with the protections granted in the Fourteenth amendment. In fact, the issue of the challenge of Congress's power has been central to the outcry about this initiative since it's announcement in the Federal Register last spring. Because American Heritage River nominations are expected for, but not limited to 79 American rivers, ..., we are gravely concerned that in piecemeal fashion the American Heritage Rivers Initiative will rapidly acquire federal jurisdiction of the entire nation's waterways, ports and private property in the broad watersheds. The ... Initiative is so loosely written that it could be interpreted to mean that if a portion of a river is designated, the entire watershed is impacted. This has enormous consequences. With ... respect, our organization contends that only part of the 'river community' has been heard from in Buncombe County ...; and many who earlier endorsed the local application were uninformed about the complex nature and potential complications of the initiative. Representing another dimension of the 'river community' we announce our intention to officially file our request to opt The French Broad out of the controversial competition for designation as an American Heritage River."

After brief discussion, Councilmen Hay and Cloninger, with the consensus of City Council, instructed the City Attorney to prepare a resolution for the next formal Council meeting reaffirming support for efforts to designate the French Broad River as an American Heritage River.

### **PLANNING & ZONING COMMISSION MEETING LOCATION REQUEST**

Chair of the Planning & Zoning Commission Jane Mathews requested that the Planning & Zoning Commission be allowed to use the Council Chamber for their regularly scheduled meetings.

After discussing the pros and cons of the Council Chamber and other alternate meeting places, it was the consensus of Council to pursue this matter further.

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### **MEETING TIMES OF CITY COUNCIL BOARDS AND COMMISSIONS**

Mr. Brian Peterson asked City Council to adopt a policy requesting all boards and commissions to meet at times that would not require the volunteer members to leave their jobs to attend the meetings.

Councilwoman Field said that each board and commission is empowered to set their own meeting times.

### **CLOSED SESSION**

At 6:42 p.m., Councilwoman Field moved to go into closed session for the following reasons (1) to prevent the disclosure of information that is privileged or confidential pursuant to G.S. 160A-168, the Personnel Privacy Act - statutory authorization 143-318.11 (a) (1); (2) to consult with an attorney employed by the City Council in order to preserve the attorney-client privilege between the attorney and the Council - statutory authorization 143-318.11 (a) (3) - the parties in the lawsuit about which the Council expects to receive advice are CC&J Associates, the City of Asheville, and the Jackson-Woolsey Neighborhood Association; and (3) to establish, or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract for the acquisition of real property - statutory authorization is 143-318.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 7:32 p.m., Councilman Cloninger moved to come out of closed session. This motion was seconded by Vice-Mayor Hay and carried unanimously.

### **ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 7:32 p.m.

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CITY CLERK MAYOR

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